

I wish to comment on CG Docket No. 02-278 because the subject is very important to my law firm and to my clients. My name is John J. Sheerin, and I am a partner of the law firm Mullooly Jeffrey Rooney & Flynn, LLP located in New York. This law firm represents banks and other owners of delinquent consumer debt in their collection efforts. In our representation of our clients, we often use predictive autodialers to telephone debtors in an attempt to resolve their delinquent accounts before litigation is filed, or to obtain payment of a judgment. A predictive dialer is the most accurate, effective and efficient way for my office to call consumers about their past due obligations. Autodialers increase the accuracy of dialed numbers and can restrict calls to the permitted calling times in the consumer's time zone.

The Telephone Consumer Protection Act (TCPA) was enacted to protect consumers from unsolicited advertisements and telemarketing calls. The prohibition against the use of autodialers that dial "random or sequential numbers" to contact consumers' cell phones was specifically intended to protect consumers from incurring charges on their wireless phones for unwanted calls about products or services to be purchased in the future. There was never any intention on the part of Congress to prohibit creditors and those collecting debt on their behalf from being able to contact consumers on their wireless phones about a past due payment obligation for goods and services already purchased and received.

Another obvious difference in the intent of the act is that random dialing of sequential numbers may accidentally dial cell phone numbers, whereas our use of the dialer is not for random sequential dialing, but to dial numbers that have been given by the debtors as contact points.

From 1991, when the TCPA was enacted, until 2003, the FCC consistently ruled that the prohibition against use of autodialers to call a consumer's cell phone did not apply if the sole purpose of the calls was to recover payments for goods and services already purchased. These calls were recognized as NOT being sales

or marketing calls, and were dialed neither randomly nor sequentially.

As technology became more sophisticated, the FCC in 2003 expanded the statutory definition of autodialers to include predictive dialers, which call only certain pre-programmed phone numbers.

However, the Commission did not address its prior rulings that calls to consumers' cell phones made by creditors and those collecting debt on their behalf were not subject to the TCPA. It is now unclear whether calls my law firm makes for the sole purpose of recovering past due payment obligations from consumers come within the scope of the regulation.

I support the request for clarification filed by ACA International, and I am urging you to reinstate the regulatory interpretation of the TCPA in effect prior to 2003. I also endorse ACA's statement of the harm to business and the federal and state governments as a result of the FCC's rule. I believe that the FCC should not interpret a regulation in a way that will make the collection of legitimate debts substantially more difficult by prohibiting the use of predictive autodialers to call the cell phones of consumers. Such an interpretation is contrary to the intent of Congress and all prior rulings of the FCC between 1991 and 2003 concerning this issue.

In an economy that depends on the use of credit, the effective collection of delinquent accounts keeps the economy operating and creates fairness both for businesses and for consumers who timely repay their debts. Tens of billions of dollars of delinquent debt cannot be collected by one personally dialed phone call at a time (personally dialed calls to cell phones are permitted by the TCPA and the FCC's regulations). There should be no distinction between a personally dialed call, or an automated call. It is often unknown if a phone number is that of a cell phone or a landline.

As more people move to "cell phone only" status, contacting consumers to resolve their debts without resort to their cell phones will become increasingly difficult. Today, more than one out of every five Americans under the age of 35 does not have a landline phone and instead uses a wireless phone as their exclusive means of telephonic communication, and the trend is continuing at a rapid pace. The efficiencies of a modern economy dictate that the most effective technologies be used – in the case

of debt collection, this is the predictive autodialer.

In addition, the debt collection process is governed by the Fair Debt Collection Practices Act (FDCPA), and compliance is overseen by the Federal Trade Commission. The FTC has a complaint process in place to handle abuses during the collection process, and private attorneys file lawsuits against companies and firms that may have violated the FDCPA. There is no need for additional regulations affecting the debt collection process. It seems illogical that the FCC would prevent the use of the most effective calling methods between a business and its customers.

If allowed to stand, the long-term consequences of the FCC's decision are dire. As it stands today, The FCC's rule needlessly subjects my law firm and our clients to federal enforcement and private litigation, even though Congress never intended such an outcome.

For these reasons, the FCC should promptly clarify that predictive autodialer calls to wireless numbers solely to recover payment obligations are not covered by the TCPA regulations for the reasons expressed above.

Thank you for your consideration.